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## BOOK REVIEWS.

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A SHORT HISTORY OF ENGLISH LAW FROM THE EARLIEST TIMES TO THE END OF THE YEAR 1911. By Edward Jenks, M. A., B. C. L., of the Middle Temple, Barrister-at-Law, Principal and Director of Legal Studies of the Law Society. (Boston: Little Brown and Company. 1912. Pp. xxxviii 390.)

Students and teachers of law, as well as historically-minded practitioners—though the number of the latter is, alas, all too few—have long felt the need of a brief but adequate and authoritative account of the origin and growth of English legal institutions. Previous treatises, based on modern investigations, notably those of Pollock and Maitland and Holdsworth, are not only too exhaustive, but do not completely cover the ground. Convinced, like many others of the present day, “that a rich field of educational effort awaited development,” Mr. Jenks, already well-known for his contributions to various aspects of the subject, has at last come to the rescue. In his preface he tells us somewhat of the plan which he has followed, among other things, presenting convincing reasons why he has rejected the so-called “vertical” method, “by which the development of each existing institution is separately traced from its origin to its present form.” This would, as he rightly contends, “either involve almost endless repetition or it would obscure one of the most important lessons to be learned from English legal history,” that is, “an appreciation of the process by which specialized ideas,” such as contract, tort, crimes, and even the distinction between substantive law and procedure, “have slowly detached themselves from those primitive notions of right and wrong which are the kernel of all systems of law.”

The work is divided into four periods. The first, dealing with the old English law before the Conquest, is disposed of in ten pages; the second, from the conquest to the death of Henry III (1066-1272) is comprehended in fifty pages, the third, extending from the ascension of Edward I to the Commonwealth, (1272-1660), occupies somewhat over one hundred, while the remainder of the volume is devoted to the fourth period, from 1660 to the present time. These proportions could hardly be improved upon. Moreover, the style is vivid and lucid. Most of the topics which the author takes up are briefly but admirably explained. Among those particularly worthy of mention are: the account of how the law of chattels grew up as a product of the procedure originally introduced to perfect the mediaeval system of land law; the difference between mediaeval and modern notions of the obligation of a man's heirs to pay his debts; the influence of the church in marking the distinction between real and personal property; and the way in which Chancery got the administration of the estates of deceased persons. The discussion of the legal reforms undertaken during the nineteenth century, particularly in the matter of procedure, should be read by men in our own country, who, having grown pessimistic about the ability of trained men who knew their business to improve existing conditions, have come to look to recall, either of judges or decisions or both, as the only way out of the difficulty. Chapter II on the sources of the common law and Chapter XIII on

modern law and legal procedure are both useful and interesting, while the tables of cases and statutes at the beginning of the book should prove extremely helpful.

Mr. Jenks has been so modest in his pretensions and so successful in his performance that adverse criticism would be ungracious, even if there were much need. "As for the work," he says in his preface, "the author will be more than satisfied if his attempt encourages others to do better. He makes, of course, no claim to completeness; his only hope is that he has shown some sense of proportion and an essential reverence for the truth, which will not be found without their uses. In a word, his aim has been to stimulate, not to satisfy." In the opinion of the reviewer, however, he has impaired somewhat the usefulness of his book by purposely omitting the whole subject of the origin and structure of the courts. To be sure, as he points out, Holdsworth has treated this matter very fully. So have Medley, Maitland, and many another, though not in such great detail. Nevertheless, it would not have swelled his volume unduly, to have devoted, say twenty-five or thirty pages, to a feature so indispensable to the student. Moreover, in a treatise designed for the beginner and the layman more pains might have been taken in the definition of some of the technical terms employed (e. g. pp. 8, 10, 42). Then too—which is perhaps inevitable in a small book on a large subject—the author not infrequently merely calls attention to a topic which the reader who desires to be satisfied must look up in detail elsewhere. To cite, at random, a single instance, the account of "benefit of clergy" is very fragmentary.

Perhaps, also, it might not seem too meticulous to call attention to a few of Mr. Jenks' statements which seem to be inaccurate. One can hardly include *gesiths* among nobles by birth (p. 5). It might be mentioned that *bocland* was frequently granted to churches as well as to thegns. (p. 12). Beames' translation of Glanville was published in 1812 not in 1821, (p. 16). The impression is given (p. 20) that Vacarius taught at Oxford, which is no longer generally believed. Possibly the present work went to press before the appearance of Mr. Arthur Ogle's answer to Maitland's views on the Roman canon law in England. Whether conclusive or not it deserves notice. Unless he means "manorial" Mr. Jenks seems scarcely justified in asserting (p. 40) that "feudal courts flourished in large numbers" during the whole period from the conquest to Edward I. It is highly questionable whether by Magna Carta a man was entitled "gratuitously" to an inquest *de odio et atia*, (p. 43). Few now believe that the Peasants' War "virtually destroyed serfdom," (p. 72). On page 81, 1418 is probably a misprint for 1481. The Statute of Monopolies was passed in 1624 not 1623, (pp. 129 & 287). The *Eiren-archa* was first published in 1581 not in 1619 (p. 150). It is not generally agreed that the court set up by Henry II in 1178 was more akin to the later Common Pleas than to the King's Bench (p. 168). It is hardly correct to say that the judges in 1629 "refused to order the production of the members of Parliament imprisoned by royal warrant (p. 334). The date of the Treason Act is usually given as 1696 not 1695 (p. 336). However, these are mostly minor points which can easily be corrected in a second edition, which Mr. Jenks' book eminently deserves.

A. L. C.